



Comcast  
12 Tozer Road  
Beverly, MA 01915  
978.927.5700 Tel  
978-927-6074 Fax  
www.comcast.com

May 12, 2008

***Via Electronic and Overnight Mail***

Michael Isenberg, Director  
Competition Division  
MA Department of Telecommunications and Cable  
Two South Station  
Boston, MA 02110

***Re: Comcast Reply to the Department's Letter of April 28, 2008***

Dear Director Isenberg:

On behalf of Comcast Phone of Massachusetts, Inc.,<sup>1</sup> I would like to thank you for the opportunity to address the questions raised by the Massachusetts Department of Telecommunications and Cable (the "Department") regarding Comcast Digital Voice. As a preliminary matter, let me explain in some detail the Comcast voice entities in Massachusetts, which I hope will clarify the issues reflected in these questions.

Comcast Phone of Massachusetts, Inc., ("Comcast Phone"), a Delaware corporation doing business in Massachusetts, is the entity that has a Statement of Business Operations on file with the Department, and is subject to state regulation pursuant to G.L. c. 159. The discontinuance of service referred to in the Department's letter of April 28, 2008 was filed with the Federal Communications Commission ("FCC") by Comcast Phone because it was discontinuing its Comcast Digital Phone service to retail end-users. Comcast Phone remains a state regulated telecommunications carrier in Massachusetts. It is the entity that enters into interconnection agreements with telecommunications carriers for the exchange of traffic pursuant to Section 251 of the Telecommunications Act and holds numbering rights and obligations, pursuant to federal law and regulations. Comcast Phone is the regulated CLEC which offers telecommunications services to its customer (and affiliated entity) Comcast IP Phone II, LLC ("Comcast IP Phone"), a Delaware limited

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<sup>1</sup> Comcast Phone of Massachusetts, Inc. is the telecommunications provider with the Registration on file at the Department. There is no such entity in Massachusetts as Comcast Communications, as referenced in the DTC's April 28, 2008 letter.

liability company doing business in Massachusetts, and other entities that may want to make use of Comcast Phone's wholesale services.

Comcast IP Phone is an "interconnected VoIP" provider, as that term is defined by the FCC.<sup>2</sup> Comcast IP Phone is subject to the jurisdiction of the FCC and delivers interconnected VoIP voice service known as Comcast Digital Voice ("CDV") to end-user customers in Massachusetts. Comcast IP Phone relies on Comcast Phone to provide certain underlying telecommunications services, including two way interconnection for the transmission and routing of telephone exchange and exchange access service to and from the PSTN; access to and administration of numbering resources; local number portability – both porting in and porting out of telephone numbers; Operator Services; 911 access; Directory Listing and Directory Assistance services.

With this background, below please find the responses to the Department's questions.

**1. Please discuss in detail how Comcast's state and federal regulatory obligations will change as a result of its change in regulatory status.**

There is no change in the regulatory status of either Comcast Phone or Comcast IP Phone as a result of the discontinuance of the Comcast Digital Phone service. Therefore, there are no changes in the state and/or federal regulatory obligations of each of these entities.

**2. Please provide a comprehensive list of those state and federal regulatory obligations to which Comcast will no longer be subject and will no longer comply (e.g., no longer filing tariffs).**

As stated above, there is no change in the state and/or federal obligations of either Comcast Phone or Comcast IP Phone as a result of the discontinuance of the Comcast Digital Phone service.

**3. Please provide a comprehensive list of those state and federal regulatory obligations to which Comcast will continue to be subject and will comply. For each regulatory obligation, please indicate if compliance will be on a mandatory or voluntary basis.**

As stated above, the discontinuance of the Comcast Digital Phone product does not result in a change to the state and/or federal regulatory obligations of either Comcast Phone of Massachusetts or of Comcast IP Phone.

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<sup>2</sup> The FCC has defined an "interconnected VOIP service as one that "(1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network." See 47 C.F.R. § 9.3.

Comcast Phone, the telecommunications carrier, remains subject to applicable state and federal telecommunications laws, rules and regulations, including payment of the annual general assessment. Comcast Phone is a CLEC with interconnection rights pursuant to 251 and 252 of the Telecommunications Act.

As discussed further below, Comcast IP Phone is regulated pursuant to FCC jurisdiction and not at the state level. Comcast IP Phone complies with applicable FCC regulations as set forth in the FCC's series of orders in its IP-enabled docket, including CPNI, 911, CALEA, federal USF, local number portability, and accessibility.<sup>3</sup>

By virtue of the federal regulation and preemption discussed below, Comcast IP Phone is not subject to state regulation and therefore is not subject to G.L. c. 159, or the rules relating to residential billing and termination practices set forth in D.P.U. Docket 18448 (1977). However, Comcast IP Phone voluntarily supports the items listed below. In addition, we continue to voluntarily work with the Department with respect to customer inquiries and complaints. It is our commitment to respond in a timely manner to all complaints forwarded to us by the Consumer Division, and to keep lines of communications open.

- Comcast IP Phone voluntarily collects the MA 911/TRS surcharge required of telecommunications providers pursuant G.L. c. 6A, § 18H . Comcast has voluntarily contributed to 911/TRS since it began offering Comcast Digital Voice service in Massachusetts. Comcast IP Phone also pays taxes and fees of general applicability, such as state sales tax.
- Comcast IP Phone's revenues, as derived from its wholesale transactions with its affiliate, are captured in the Annual Report for telecommunications providers filed by Comcast Phone, as required by G.L. c. 159 § 32.
- Comcast IP Phone voluntarily provides Directory Assistance free of charge to visually impaired or mentally disabled customers or persons aged 65 and older who certify eligibility.
- Comcast IP Phone does not currently charge customers a federal Subscriber Line Charge (SLC). A SLC is a charge that local exchange carriers are permitted to collect

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<sup>3</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Report and Order and Further Notice of Proposed Rulemaking, 22 F.C.C.R. 6927 (2007); *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 F.C.C.R. 10245 (2005); *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket 04-295, First Report and Order and Further NPRM, 20 F.C.C.R. 14989 (2005); *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 F.C.C.R. 7518, ¶ 35 (2006); *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 F.C.C.R. 19531 (2007); *IP-Enabled Services; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, WC Docket Nos. 04-36, 03-123, Report and Order, 22 F.C.C.R. 11275 (2007).

to recover the costs of the use of its local network for long distance service. A typical SLC exceeds \$6.00 per line.

- Although Comcast IP Phone is not subject to the rules set forth in D.P.U. Docket 18848, it provides the following important consumer protections.
  - Comcast provides at least 30 days from the receipt of bill for payment in full.
  - Bills are not considered delinquent until after 30 days.
  - CDV customers receive at least 15 days written notice prior to discontinuance.
  - CDV customers are called 5 days prior to soft disconnection.
  - Comcast works with customers in unique circumstances on a case-by-case basis. While there is not specific protection from disconnection for customers aged 65 and older as set forth in 18848, Comcast works with all customers who need additional time to pay or have an emergency that has prevented timely payment.
  - Comcast offers deferred payment agreements to those customers who are unable to timely pay.
  - CDV service will not be shut off if the customer is disputing the CDV portion of the bill.
  - Comcast works with the Department's Consumer Division to respond to and resolve all customer complaints on a timely basis.

**4. Please provide a comprehensive legal analysis, with citation to relevant law, supporting Comcast's position that as a fixed (or non-nomadic) VoIP provider, it will not be subject to state regulatory authority.**

As the Department is aware, the Federal Communications Commission is currently considering the regulatory status of fixed VoIP services. *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 F.C.C.R. 4863, ¶¶ 42-44 (2004). The FCC is the appropriate regulator to consider this federal question and based on the current state of the law, any communications regulation of Comcast's VoIP services would be preempted under federal law.

**State Regulation of "Information Services" Such as CDV Is Preempted.** Because Comcast's interconnected VoIP service is considered an "interstate information service," state regulation would be preempted. The federal Communications Act distinguishes between regulated "telecommunications services," such as the traditional telephone service offered by carriers such as Verizon, and nonregulated "information services," defined as the "offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." See 47 U.S.C. § 153(20) & (46). "[A]ny state regulation of an information service conflicts with the federal policy of nonregulation." *Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007) (citing and affirming *In re Vonage Holdings Corp.*, 19 F.C.C.R. 22404, ¶ 21 (2004) ("Vonage Order"));<sup>4</sup> *Vonage*

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<sup>4</sup> See also *In re Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17

*Holdings Corp. v. Minn. Pub. Utils. Comm'n*, 290 F. Supp. 2d 993, 1002 (D. Minn. 2003) (“[state] regulations that have the effect of regulating information services are in conflict with federal law and must be preempted”).

Comcast’s VoIP service is an “information service” because Comcast’s VoIP service indisputably offers protocol conversion, a key component of the definition of “information service.” Comcast’s VoIP service is a protocol conversion service because it allows customers whose data is being generated in one communications protocol (such as, for example, the Internet protocol) to communicate with users who send or receive data in a different communications protocol (such as, for example, the protocol used by traditional telephone networks to send and receive calls, the time-division multiplexing (“TDM”) protocol).

Services that offer protocol conversion are “information services” because protocol conversion constitutes the “capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications” and “alters the form and content of the information sent and received.” 47 U.S.C. § 153(20). *See, e.g., In re Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 F.C.C.R. 21,905 ¶¶ 104-106 (1996); *In re Universal Service Contribution Methodology*, 21 F.C.C.R. 7518, ¶ 39 (2006), *vacated in part on other grounds sub nom. Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007)); *Southwestern Bell Telephone, L.P. v. Missouri Public Service Commission*, 461 F. Supp. 2d 1055 (E.D. Mo. 2006).

CDV is also an “information service” because is tightly integrated with a web-based “Digital Voice Center” through which users manage their communications interactively, listening to voicemails and managing settings through any computer connected to the Internet. This web portal is similar to the one integrated into the Vonage service, which the FCC recognized in its *Vonage Order* as innovative “integrated capabilities” counseling against “molding this new service [VoIP] into the same old familiar shape.” 19 F.C.C.R. at 22421, ¶ 25 & n.93; *see also id.* at 22424, ¶ 32.

**State Regulation of Comcast’s VoIP Service Is Also Preempted Because Such Regulation Would Undermine Federal Objectives.** State regulation would also be preempted as frustrating federal policy for reasons apart from its classification as information service. States’ authority to regulate *intrastate* communications, *see* 47 U.S.C. § 152(b), is preempted where it frustrates the ability of the FCC to regulate (or leave unregulated) *interstate* communications. *See Louisiana Pub. Serv. Comm’n*, 476 U.S. at 376 n.4 (preemption if “state regulation would negate the federal tariff”). Since states may not regulate in a way that “stands as an obstacle to the accomplishment of the full objectives of Congress,” *id.* at 368-69, regulations that cannot be applied discretely to intrastate communications without also regulating interstate services are preempted when

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F.C.C.R. 4798 ¶ 9 (2002); *aff’d in part, vacated in part, sub nom. National Cable & Telecomm. Ass’n. v. Brand X Internet Servs.*, 345 F.3d 1120 (9th Cir. 2003), *rev’d*, 545 U.S. 967 (2005); *In re Amendment of (Section 64.702 of the Commission’s Rules and Regulations Second Computer Inquiry)*, 88 F.C.C.2d 512 (1981), *aff’d sub nom. Computer and Computer Industry Ass’n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982).

the substance of the regulation conflicts with federal policy. *See, e.g., Illinois Bell Tel. Co. v. FCC*, 883 F.2d 104, 114-16 (D.C. Cir. 1989); *Public Utils. Comm'n of Texas v. FCC*, 886 F.2d 1325 (D.C. Cir. 1989); *North Carolina Utils. Comm'n v. FCC*, 537 F.2d 787 (4th Cir. 1976); *North Carolina Utils. Comm'n v. FCC*, 552 F.2d 1036 (4th Cir. 1977); *In re Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corp.*, 7 F.C.C.R. 1619 (1992). "Where federal policy is to encourage certain conduct, state law discouraging that conduct must be pre-empted." *Vonage Holdings Corp.*, 290 F. Supp. 2d at 1002 (citing *Xerox Corp. v. County of Harris*, 459 U.S. 145, 151-53 (1982)).

Regulation of fixed VoIP services would frustrate federal policies promoting deployment of advanced, broadband and Internet-based services through a national policy of deregulation. Comcast's High-Speed Internet offering is indisputably a service subject to Congress' policy of deregulation. *See In re Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 F.C.C.R. 4798, ¶ 9 (2002); *aff'd sub nom. National Cable & Telecomm. Assn. v. Brand X Internet Servs.*, 545 U.S. 967 (2005). The FCC has made clear that nascent IP-enabled services including VoIP services must be permitted to develop free of regulation, explaining that "IP-enabled services generally -- and VoIP in particular -- will encourage consumers to demand more broadband connections, which will foster the development of more IP-enabled services," and that its "aim" is to "rely[] wherever possible on competition" rather than regulation to foster IP-enabled technologies such as VoIP because "development and deployment of these services is in its early stages," "these services are fast-changing and likely to evolve in ways that we cannot anticipate," and "imposition of regulatory mandates, particularly those that impose technical mandates, should be undertaken with caution." *IP-Enabled Services*, 19 F.C.C.R. 4863, ¶¶ 5, 53. *See also In re Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as amended, to Provide Wholesale Telecommunications Services to VOIP Providers*, 22 F.C.C.R. 3513 (2007); *In re Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, 22 F.C.C.R. 20235, ¶ 21 (2007); *In re Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 F.C.C.R. 19633, ¶ 17 (2007); *In re Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 F.C.C.R. 5101, ¶¶ 121-122 (2006) (same, for competitive cable providers).

State regulation of fixed VoIP services could not coexist with federal policies. Even the basic regulatory requirement that a VoIP provider file a tariff frustrates the goal of "promoting competition" and "may actually harm consumers by impeding the development of vigorous competition." *Minnesota Public Utilities Comm'n*, 483 F.3d at 580 (citing *Vonage Order*, 19 F.C.C.R. at 22416 ¶ 20). Moreover, any Massachusetts regulation of the intrastate components of Comcast's "Digital Voice" service would plainly affect Comcast's interstate service offerings. Such forced separation of CDV's *bundled* all-distance voice service offering into jurisdictional components would necessarily frustrate Comcast IP Phone's ability to offer the interstate portions of the

service, in violation of federal law. *See, e.g., Minnesota Pub. Utils. Comm'n*, 483 F.3d at 577-78 (affirming preemption of State regulation of VoIP service where FCC had found that carrier had no “service-driven reason” to separate intra- from interstate traffic and doing so would involve “economic burden”); *Illinois Bell Tel. Co. v. FCC*, 883 F.2d at 113 n.7 (affirming preemption of state regulation of marketing of jurisdictionally mixed Centrex service where, *inter alia*, service was “typically sold in a package with interstate services”); *North Carolina Utils. Comm'n*, 552 F.2d at 1043 (affirming preemption of state tariff prohibiting customers from supplying own telephones, because as a “practical and economic” matter customers expect to use same equipment for inter- and intrastate calls); *BellSouth Corp.*, 7 F.C.C.R. 1619, ¶ 15 (preempting state regulation of voicemail service where “most customers want voice mail service for both jurisdictional uses” and it therefore was “not likely that a separate interstate service would find acceptance.”).

**If CDV Were Subject to State Regulation, Such Regulation Likely Also Would Be Preempted Under 47 U.S.C. § 253.** Finally, state regulation would be preempted even if a severable, intrastate “telecommunications” service existed subject to State regulation. Compliance with state law likely would be so burdensome to Comcast IP Phone as to constitute “an existing material interference with the ability to compete in a fair and balanced market.” *See Level 3 Communications v. City of St. Louis*, 477 F.3d 528, 533 (8th Cir. 2007) (citing *Cal. Payphone Ass’n v. Town of West New York*, 12 F.C.C.R. 14,191, 14,206, ¶ 31 (1997)). Thus any state telecommunications requirements likely would be thus separately preempted by Section 253 of the federal Communications Act, which enforces pro-competitive Congressional policy by forbidding states from erecting barriers to entry into the telecommunications market. *See* 47 U.S.C. § 253(a) (“No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”).

The cumulative effect of state regulation of Comcast IP Phone’s service – since it was designed for a traditional switched-access telephone company incumbent network and not for the converged, broadband-based, IP-enabled service offered by Comcast IP Phone – likely would meet the standard of a “an existing material interference with the ability to compete.” *See Level 3 Communications*, 477 F.3d at 532; *TCG New York, Inc. v. City of White Plains*, 305 F.2d 67, 76 (2d Cir. 2002)).

- 5. The Department is aware that Comcast has submitted a formal request for interconnection with Granby Telephone Company (“Granby”) of Granby, Massachusetts, pursuant to Sec. 251 and 252 of the Telecommunications Act of 1996. In the March 5, 2008 letter, Comcast represented that it is a certified competitive local exchange carrier in Massachusetts, and has the legal right to negotiate or arbitrate an interconnection agreement with Granby by virtue of its status as a telecommunications carrier.**

**In addition, the Department is aware of a petition filed on April 11, 2008, by the Vermont Telephone Company with the FCC seeking clarification regarding whether VoIP providers are entitled to the interconnection rights of telecommunications carriers. See Federal Communications Commission Public Notice DA 08-08-916, WC Docket No. 08-56, at page 1 (dated April 19, 2008) (establishing Pleading Cycle for Comments on Vermont Telephone Company's Petition for Declaratory Ruling Regarding Interconnection Rights). According to the Notice, Vermont Telephone Company "[s]pecifically . . . seeks clarification regarding: (1) whether only telecommunications carriers are entitled to interconnection with local exchange carriers pursuant to sections 251 and 252; (2) whether a VoIP provider is entitled to interconnection pursuant to sections 251 and 252 when, in separate proceedings, that provider has taken a position that it is not a telecommunications carrier; and (3) whether Comcast Phone of Vermont, LLC, as a VoIP provider, is a telecommunications carrier and therefore entitled to interconnection pursuant to sections 251 and 252." Id., citing Vermont Petition at 1-8.**

**Please explain in detail why Comcast has requested interconnection with Granby as a telecommunications carrier, when it has represented to the Department that as of April 29, 2008, or shortly thereafter, it will become exclusively a VoIP provider in Massachusetts.**

Effective with the discontinuance of the Digital Phone service, Comcast Phone will not "become exclusively a VOIP provider in Massachusetts." Rather, Comcast Phone is a telecommunications provider as described above and not an interconnected VOIP provider. As such, Comcast Phone is a telecommunications carrier with full Sections 251 and 252 interconnection rights, and is the wholesale telecommunications provider that requested interconnection negotiations with Granby. As the FCC explained in the *Time Warner Declaratory Ruling*, "[b]ecause the Act does not differentiate between retail and wholesale services when defining 'telecommunications carrier' or 'telecommunications service,' we clarify that telecommunications carriers are entitled to interconnect and exchange traffic with incumbent LECs pursuant to section 251(a) and (b) of the Act for the purpose of providing wholesale telecommunications services."<sup>5</sup> The FCC also explicitly stated that the ultimate classification of the service provided to the end user has no bearing on the wholesale carrier's interconnection rights.<sup>6</sup> The Department likewise does not differentiate between wholesale and retail service for purposes of telecommunications carrier status. Memorandum to Massachusetts Telecommunications Carriers and Interested Persons from Michael Isenberg, Director, Telecommunications Division and Jesse S. Reyes, Counsel, *Clarification of Wholesale Tariffing Requirements*, at pp. 6-7 (Aug. 12, 2003).

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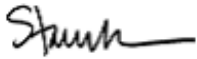
<sup>5</sup> See *Time Warner Declaratory Ruling*, 22 FCC Rcd 3513, ¶ 8 (2007).

<sup>6</sup> *Id.* at ¶ 15.



I hope the above-provided information is helpful in clarifying the structure and regulatory framework of both Comcast Phone and Comcast IP Phone in Massachusetts. Please do not hesitate to contact me directly at (978) 927-5700 ext. 4337 if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Stacey", followed by a horizontal line.

Stacey L. Parker

cc: Sharon E. Gillett, Commissioner  
Geoffrey G. Why, General Counsel  
Brian Rankin, Comcast